

23



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/406,798	09/28/1999	HIROSI TUNODA	991094	1948
23850	7590	01/13/2005	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP			MISLEH, JUSTIN P	
1725 K STREET, NW				
SUITE 1000			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006			2612	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/406,798

Applicant(s)

TUNODA, HIROSI

Examiner

Justin P Misleh

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to Claims 1 – 27 have been considered but are moot in view of the new grounds of rejection. Because the amendments to the claims, in the amendment filed 1 September 2004, are not substantive and are merely to overcome typographical and grammatical errors and because a new grounds of rejection is present, this Office action is Non-Final and is meant to replace the Non-Final Office Action mailed 28 May 2004.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1 – 27** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

4. For independent **Claims 1, 7, 13, 19, 22, and 25**, the Examiner believes that the Applicant has attempted to claim the features of figure 5; however, each claim is written in such a manner that it is difficult to follow the claim language and equally difficult to match the claim language to the features of figure 5. In the light of the specification, any interpretation of the claims leads to confusion and fails to particularly point out and distinctly claim the subject matter that the Applicant regards as the invention (figure 5).

For example, the claim language states, therein “recording each piece of the image data being stored in the storage medium into a non-volatile recording medium ... after reaching the predetermined amount of data at the completion of the image pickup operation.” The above claim language does not follow figure 5, because figure 5C shows that the image pickup operation consists of the continuous capturing of a first 15 frames (A1 – A15) and figure 5D shows the first 15 frames (A1 – A15) being stored in the storage medium in parallel with the image capturing, respectively. However, figure 5E shows that the recording of the first 15 frames (A1 – A15) takes place subsequent to the storing of the first 15 frames (A1 – A15) in the storage medium. Furthermore turning back to figures 5C and 5D, one can see that a second 15 frames (B1 – B15) is captured and stored in the storage medium during a second image pickup operation wherein the storing of the second 15 frames (B1 – B15) takes place in parallel with the recording of the first 15 frames (A1 – A15). Finally, the recording of the second 15 frames (B1 – B15) does not take place until after the storage of the second 15 frames (B1 – B15) is completed.

An important feature of figure 5 is that the recording for an image pickup operation does not occur until the completion of the image pickup operation. This is not to say that there is only a single image pickup operation, because figure 5C clearly shows back to back image pickup operations to respectively pickup frames A1 – A15 during a first operation and frames B1 – B15 during an immediately subsequent second operation. The Applicant has not clearly presented this important feature in the claim language; thus, for the purposes of examination, the Examiner will interpret the claim language as follows:

A method for recording images, comprising the steps of:

storing image data, that is continuously obtained by an image pickup operation, in a storage medium until a completion of the image pickup operation;

measuring the amount of image data stored in the storage medium such that the image data measured at the completion of the image pickup operation equals a predetermined amount; and

recording the image data stored in the storage medium into a non-volatile recording medium after the image data measured at the completion of the image pickup operation equals the predetermined amount;

wherein during the recording, image data continuously obtained by another image pickup operation is stored in the storage medium without pausing, interrupting, or reducing the rate of recording the image data.

Allowable Subject Matter

5. **Claims 1 – 27** contain allowable subject matter and would be allowable if rewritten so as to overcome the rejection above. The following is a statement of reasons for the indication of allowable subject matter:

6. For **Claims 1 – 27**, as detailed above, the heart of the Applicant's invention lies within figure 5. The most recent prior art of record (Fukushima et al.) fails to teach or fairly suggest all the features of figure 5. Turning to the Examiner's interpretation of the claim language, as stated above, Fukushima et al. disclose a method for recording images, comprising the steps of: storing image data, that is continuously obtained by an image pickup operation, in a storage medium until a completion of the image pickup operation; measuring the amount of image data stored in

Art Unit: 2612

the storage medium such that the image data measured at the completion of the image pickup operation equals a predetermined amount; and recording the image data stored in the storage medium into a non-volatile recording medium after the image data measured at the completion of the image pickup operation equals the predetermined amount.

However, Fukushima et al. fails to teach or fairly suggest wherein during the recording, image data continuously obtained by another image pickup operation is stored in the storage medium without pausing, interrupting, or reducing the rate of recording the image data. As clearly shown in figure 2, step S7 corresponds to an image capture operation during an image pickup operation, step S8 corresponds to a storing operation, and step S15 corresponds to a recording operation. While it is true that images are captured during an image pickup operation that lasts until the current image count in the temporary memory (RECCNT) exceeds a predetermined amount (CTH in step S11), thereby initiating a recording operation (step S15), it is not true that images are continuously captured in step S7 during that recording operation. In fact, it is not until the recording operation for the image pickup operation is completed that the images for another image pickup operation are captured.

For these reasons figure 5 presents allowable subject matter.

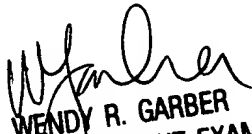
Conclusion

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Justin P Misleh whose telephone number is 703.305.8090. The Examiner can normally be reached on Monday through Thursday from 7:30 AM to 5:30 PM and on alternating Fridays from 7:30 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Wendy R Garber can be reached on 703.305.4929. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JPM
January 8, 2005


WENDY R. GARBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600